

**IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT
JAIPUR BENCH, JAIPUR**

S.B. Civil First Appeal No.455/2007

M/s. Babu Lal Prakash Chand & Ors.
Vs.
Bank of Baroda & Ors.

Date of Judgment :: 9th August, 2007

Hon'ble Dr. Vineet Kothari, J.

Mr.Ram Rakh Sharma for the appellants.

Heard learned counsel.

This appeal is directed against the ex-parte decree dated 25.4.2007 by which the learned trial Court has proceeded ex-parte against the present appellants on the ground that the summons were returned with the report of "refusal" by the process server. Learned counsel for the appellant has produced before the Court the report of the process server dated 9.12.2004. A bare perusal of the said report, the relevant part which is extracted below, shows that the appellants obstructed the process server to serve the summons of the Court and even indulge in beating of the process server. The relevant part in Hindi is reproduced hereunder:-

"मैं जोहरीलाल तामील कुनिन्दा हलफीया रिपोर्ट करता हूं कि श्रीमानजी ये तामील मेरे को 9.12.2006 को सहायक नाजिर ने दी गइ उनवान बैंक आफ बडौदा बनाम मै.बाबूलाल प्रकाशचन्द की तामील लेकर मैंने ए.डी.जे. परिसर में श्री गिराजप्रसाद गर्ग एडवोकेट के बस्ते पर जाकर मैंने मैसर्स बाबूलाल प्रकाशचन्द उर्फ चमन प्रकाशचन्द गुप्ता पुत्र श्री बाबूलाल गुप्ता जाति महाजन निवासी बाडोती अध्यापक राज.मा.वि. खिदरपुर तहसील सपोटरा हाल वासी गिराज सिंह को मैंने श्री गिराजप्रसाद वकील के बस्ते पर जाकर मैंने प्रकाशचंद को तलाश किया तो मेरे को प्रकाशचंद गिराजप्रसाद के बस्ते पर बैठा मिला तो मैंने प्रकाशचन्द उर्फ चमनप्रकाश गुप्ता से नोटिस की पड़त पर हस्ताक्षर करने से कहा तो मेरे से प्रकाशचन्द बोला कि नशे में तामील कर रहा है साले को मारुंगा मादरचोद वह गाली गलौच करता रहा और तामील करने से मना कर दिया और मेरे से कहा कि साले को तामील कराना भुला दूंगा इस अपठित किया तो प्रकाशचन्द प्रार्थी के साथ मारपीट करने को आमादा हो गया और श्रीमानजी प्रार्थी के सरकारी कार्य में बाधा उत्पन्न की है निवेदन है कि इसी समय घटनास्थल पर स्वयं गिराजप्रसाद जी गर्ग उनका मुंशी किरोडीलाल व दूसरे बस्ते पर इन्द्रलाल जी गुप्ता वकील साहब भी थे और बाबूलाल गुप्ता भी अपने बस्ते पर बैठे हुए थे पास में ही द्वारिकालाल जी गुप्ता वकील भी अपने बस्ते पर बैठे हुए थे और श्रीमती प्रकाशचंद ए.डी.जे. कोर्ट में विचाराधीन एक मुकदमा गिराज बनाम सरकार में आया था और श्रीमानजी

हालात अपठित समझ रहे थे कि तामील करने पर उनके अपठित जाने पर मेरे साथ कोई भी वारदात कर सकता है इसलिये श्रीमानजी की सेवामें ये तामील अदम मजबूरन रिपोर्ट पेश है और श्रीमानजी प्रकाशचन्द गुप्ता में कार्यवाई किरावे आपकी अति कृपा होगी मैं प्रकाशचन्द गुप्ता बाडोती वास्ते को खुद जानता हूं रिपोर्ट इन्दार से पेश है।

जोहरीलाल

9.12.2004"

मेरे समक्ष श्री जोहरीलाल

तामील कुनिन्दा ने शपथ ली

10.1.2007

A.D.J., Gangapurcity (Raj.)"

The appellants further submitted that they had also filed an application under Order 37 Rule 3 C.P.C. seeking leave to defend, which was rejected by the learned trial Court vide order dated 10.10.2006. Learned counsel for the appellants further informs that a writ petition (S.B. Civil Writ Petition No.8702/2006 – Prakash Chand Vs. A.D.J., Jaipur) against the said order dated 10.10.2006 is also pending in this Court.

He further submitted that the present appellants have not chosen to file any application under Order 9 Rule 13 C.P.C. for setting aside this ex-parte decree. He also relied upon

the judgment of the Hon'ble Supreme Court in **Sushil Kumar Sabharwal Vs. Gurpreet Singh & Others reported in (2002) 5 SCC 377** wherein the Hon'ble Supreme Court has held that on alleged refusal of the defendant to accept the summons, process server's failure to affix a copy of the summons on the wall of the premises and instead his returning the summons to the court with his endorsement on the back about defendant's refusal, amounted to non-service of the summons. The Supreme Court further held that endorsement containing the remark "no witness available on the spot" also prima facie was not believable when the summons were sought to be served on the defendant at his shop situated in a locality where there were other shops and houses.

I have considered the rival submission made by learned counsel for the appellants and also considered the law cited at the bar. In view of the conduct of the appellants of having obstructed the process server, who is a government servant, this Court cannot take any sympathetic attitude towards the present appellants. Learned counsel for the appellants has not pointed out any reason of personal bias of process server

against the present appellants nor any F.I.R. was lodged against the said process server in the matter. There is no reason to disbelieve the report of the process server giving the narration of the manner in which the defendants have obstructed the process server to serve the summon of the Court by beating up him and abusing him in the court premises. The law cited by learned counsel for the appellants is distinguishable on facts. Admittedly, against the rejection of the leave to defend, a writ petition is pending before this Court as aforesaid.

In view of this, this Court finds no reason to interfere with the ex-parte decree in the first appeal. The first appeal is, accordingly, dismissed.

[Dr. Vineet Kothari],J.

S.S.Jr.P.A.
Item No.55